



4510-29-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemption from Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: **2013-07, The Mo-Kan Teamsters Apprenticeship and Training Fund (the Fund) L-11720.**

SUPPLEMENTARY INFORMATION: A notice was published in the Federal Register of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held (where

appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011)¹ and based upon the entire record, the Department makes the following findings:

- (a) The exemption is administratively feasible;
- (b) The exemption is in the interests of the plan and its participants and beneficiaries; and

¹The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

The Mo-Kan Teamsters Apprenticeship and Training Fund (the Fund)
Located in Kansas City, Missouri
[Prohibited Transaction Exemption **2013-07**;
Exemption Application No. **L-11720**]

EXEMPTION

The restrictions of sections 406(a)(1)(A) and (D) of the Act shall not apply to the purchase (the Purchase) by the Fund of certain real property located in Kansas City, Missouri (the Property) from Jim Kidwell Construction, a party in interest with respect to the Fund; provided that the following conditions are satisfied:

(a) The terms and conditions of the Purchase are at least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party;

(b) The Purchase is a one-time transaction for cash;

(c) The Fund pays the lesser of \$1,500,000 or the fair market value of the Property, as of the date of the Purchase, as determined by a qualified, independent appraiser (the Appraiser);

(d) The Fund's fiduciaries (the Trustees) review and approve the methodology used by the Appraiser, ensure that such methodology is properly applied in determining the fair market value of the Property, and determine whether it is prudent to go

forward with the transaction; and

(e) The Fund pays only reasonable closing costs with respect to the Purchase that a similarly situated buyer would customarily pay in a similar transaction.

WRITTEN COMMENTS

The Department invited all interested persons to submit written comments with respect to the notice of proposed exemption on or before February 10, 2013. During this comment period, the Department received one written comment. To ensure that all participants had been given the opportunity to comment, the Department decided to extend the comment period until March 21, 2013. During the second comment period, the Department received three written comments from Fund participants.

Of the four comments received by the Department, one commenter disapproved of the proposed transaction because he thought it might affect his benefits. The three comments that were substantive were, in part, concerned with the value of the Property. The participants' comments, as well as the responses to these comments by the Appraiser and the Trustees, are described below.

Comments Regarding Property Overvaluation and Purchase Not

Negotiated in Good Faith

In three comment letters, the participants noted that the Property's value was overstated. One commenter attached an online document (the Document) that placed the fair market value of the Property at \$300,000.00, as of January 17, 2013. The commenter further stated that the Purchase was not negotiated in good faith.

The Appraiser's Response

The Appraiser reviewed the comments relating to the value of the Property and the Document. The Appraiser states that he disagrees with the participants' assertion that the Property is overvalued. The Appraiser also explains that the Document only depicts the value of a single parcel of land rather than the twelve parcels comprising the Property.

In addition, the Appraiser notes that the Document was obtained from the Jackson County, Missouri website, containing the tax assessment information. According to the Appraiser, this information has no relevance for the purposes of assessing market value and is not a source of information that the Appraiser relied on or should rely on.

Comment Regarding Union Voting and Fund Assets Invested in the Property

Another participant inquired about the lack of information offered to the union membership and why the transaction was not subject to a union vote. The participant also questioned the knowledge and experience of the Fund with managing a mine that is located on the Property. Further, the participant questioned whether it is prudent to spend 83% of the Fund's cash on the Purchase.

Trustees' Response

In response to the participant's comments, the Trustees note that the decision to purchase the Property was a financial decision made by the Trustees for the benefit of the participants and beneficiaries of the Fund. The Trustees state further that all of the Trustees are familiar with the matters regarding the Purchase. According to the Trustees, the decision to purchase the Property by the Fund is not a union matter or a decision that the union or its members were required or permitted to make.

With respect to the knowledge and experience of the Fund to manage the mine, the Trustees state that there is no requirement that the Fund manage the mine or conduct mining activities on the Property. The Trustees point out that the Property will be used

for the purpose of truck driving, heavy equipment training, and equipment storage underneath the surface where the mine is located. The Trustees explain that they expect to oversee and employ proper personnel to handle issues of maintenance when necessary.

In response to the participant's comment regarding the high percentage of the Fund's assets involved in this Purchase, the Trustees represent that the decision to purchase the Property was made with due diligence as established and required by the regulations under the Act. The Trustees represent further that based on this due diligence, they have determined that purchasing the Property is in the Fund's best interest. The Trustees note that the Fund will be able to make any changes or additions to meet future training requirements of the Training Fund and its apprenticeship program without the consent or outside interference from other parties. In addition, the Fund will acquire an equity interest in the Property which will, in return, have a future value as a plan asset, and the Purchase is a transaction that is customary for similarly situated employee benefit plans.

After giving full consideration to the entire record, including the written comments, the Department has decided to

grant the exemption, as described above. The complete application is made available for inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Ave N.W., Washington, D.C. 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the proposed exemption published in the Federal Register on December 28, 2012 at 77 FR 76776.

FOR FURTHER INFORMATION CONTACT: Mr. Asrar Ahmed of the Department, telephone (202) 693-8557. (This is not a toll-free number.)

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Lyssa E. Hall
Director of Exemption
Determinations
Employee Benefits Security
Administration
U.S. DEPARTMENT OF LABOR

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